



O/Merged States
File No. 59/52

Legal Department

G BRANCH

Subject:—

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Opinion on the
Merged States Order

File No.

Gen. 194 e.

O/Merged States
59/52

C O N T E N T S

Legal Department File No. O. Merged States/52.

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As regards the suggestion to launch prosecution for offences committed for the breach of control orders of the Idar State, apart from the question that the said offences had taken place long before, it would not be legal to launch any prosecution in view of the fact that the control orders of the Idar State were repealed or had lapsed when the Essential Commodities Acts were applied to the area which originally formed part of the State.

The District Government Pleader's proposal to recover as arrears of land revenue the fines imposed under departmental orders is not legally feasible in view of the provisions of section 187 of the Bombay Land Revenue Code.

Id/- J.R.D. 31/12

Remembrancer of Legal Affairs.

U.R. to C.S.D., No.G-664,

dated the 31st December 1951-

JPE.27/7/56.
4 copies.

OFFICE OF THE R.L.A.The areas included in Baroda and Kolhapur States:-

Under clause 3 of the Kolhapur State (Application of Laws) Order, 1949 the Essential Supplies (Temporary Powers) Act 1946 has been extended to the areas of the Kolhapur State and all orders made under that Act have also been extended in the said areas. Similarly, under clause 3 of the Baroda ^{the Essential Supplies (Temporary Powers) Act 1946} State (Application of Laws) Order, 1949, has been extended to the areas of the Baroda State and all orders made under the Act have also been extended to the State areas under the said clause. Under section 3(2) of the Merged States (Laws) Act, 1949, the Essential Supplies (Temporary Power) Act, 1946 has been extended to the merged States of Baroda and Kolhapur and under section 6(2) of the said Act it is provided that anything done or any action taken including any appointment, order etc., made under the law corresponding to the Essential Supplies (Temporary Powers) Act, 1946 shall be deemed to have been made under the Act so extended. The law corresponding to the Essential Supplies (Temporary Powers) Act, 1946 in force in the Baroda State or Kolhapur State was the law contained in the Essential Supplies (Temporary Powers) Act, 1946 as stated above. It is therefore, clear that the orders made under the said Act and in force in the State of Bombay were extended to the areas included in the former Baroda and Kolhapur States. As no separate orders in respect of the said States areas were specifically made the question of cancellation of such orders does not arise.

The Danta State.

So far as the Danta State is concerned, it will be seen that by Government Order, Civil Supplies Department,

No.1020/II, dated the 1st ~~Jan~~ February 1949 the Essential Supplies (Temporary Powers) Act, 1946, the Indian States Cotton Yarn Trade Regulation Order, 1948 and the Indian States Cotton Yarn Brokers Licensing Order 1948 were extended to the Danta State and all enactments in force in that State corresponding to the said Act and orders were repealed. In view of this perhaps no mention was made of the Essential Supplies (Temporary Powers) Act, 1946 in the Schedule of the Danta State (Application of Laws Order, 1949 issued on 23rd July 1949. The R.L.A.'s opinion No.G-162, dated the 15th May 1950 would therefore, apply to this case and under section 6(2) of India Act LX of 1949 the Indian States Cotton Yarn Trade Regulation Order and the Indian States Cotton Yarn ~~Trade Regulation Order and the Indian States Cotton Yarn Brokers~~ Licensing Order continue in force in the merged Danta State which is administered now as part of the Bombay ~~State~~ State. As stated in R.L.A.'s opinion No.G-36, dated the 7th February 1950, the above said orders will have to be cancelled in respect of Danta State and corresponding orders now in force in the State will have to be extended to that area.

Id/- P.M.L.
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Remembrancer of Legal Affairs.

U.R. to S.T.C., No.G-359,

dated the 2nd August 1952.

JPE.27/7/56.4c.

Office of the R.L.A.

Submitted.

2. Please see the office note of the C.S.D. on pages 9 -10 ante.

3. The facts of this case are that the C.S.D. under its notification No.482/I dated the 20th September 1952 has removed all restrictions imposed on maida, rawa or souji manufactured in the State of Bombay from wheat imported into India from any place outside India subject only to the restrictions imposed by (1) the Bombay Food Grains Control Order, 1947 (2) the Bombay Retail Trade Control and Licensing Order, 1947 (3) the Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order, 1951 and (4) ~~xxxx~~ the Bombay Foodgrains (Control of Movement) Order, 1949. It has also been decided that each of the 5 mills (2 at Bombay, 1 at Baroda and 2 at Ahmedabad) would be allotted a certain quantity of imported wheat out of quota allotted to the Bombay State by the Central Government for being manufactured into maida, rawa and souji and that the mills would be required to sell the maida, rawa and souji to licensed traders holding licences in this behalf under the Bombay Foodgrains Control Order, 1947 or the Bombay Retail Trade Control and Licensing Order 1947. M/s. Panalal Chimanlal Parikh, Gajendra Maganlal Choksi and Shantilal Punsotomdas Attawalla of Baroda have not obtained licenses under any of the aforesaid two orders and are trading in Rawa, Souji and Maida under the wholesale licence, or the retail licence, as the case may be, granted to them under, Foodgrains Control Order, 1942 and the Retail Trade Control and Licensing Order 1945, which were....

were in force during Baroda State regime. The District Government Pleader, Baroda has opined that although under clause 3 of the Baroda State (Application of Laws) Order, 1949, all Baroda Orders have been substituted by the Corresponding Bombay Orders, still the licences issued under the Baroda orders continued to be in force for the unexpired period. No limit is shown in the licences issued to M/s. Parikh, Choksi and Attawalla. The District Magistrate, Baroda therefore thinks that as per the D.G.P.'s opinion they have not committed ^{any} offence by trading under their licences issued under the Baroda State orders. However, the District Magistrate that (1) as the Bombay Foodgrains Control Orders, 1947 and the Bombay Retail Trade Control and Licensing Order, 1947 having been issued under the Essential Supplies (Temporary Powers) Act 1946 which is included in Schedule I of the Baroda State (Application of Laws) Order, 1949, they automatically applied to Baroda State and the orders corresponding to them lapsed under clause 3(1) and 5(i)(c) of the latter order and (2) that as the licences issued under the corresponding Baroda Orders were not protected under clause 5(iii) of the Baroda State (Application of Laws) Order, 1949, M/s. Parikh, Choksi and Attawalla had committed an offence by trading as wholesale and retail dealers in wheat and wheat products under licences granted to them under the Baroda State Orders. Before issuing the reply to the District Magistrate its draft has been referred to this office for scrutiny.

4. As held in R.L.A.'s opinion No-G-359 dated the 2nd August 1952, the Essential Supplies (Temporary Powers) Act 1946 and the orders made thereunder (including the Bombay Foodgrains Control Order, 1947 and the Bombay Retail Trade Control and Licensing Order, 1947) were

were extended to the area included in the former Baroda State under clause 3 of the Baroda States (Application of Laws) Order, 1949 read with sections 3(2) and 6(2) of the Merged States (Laws) Act, 1949. Under clause 5(c) of the Baroda State (Application of Laws) Order, 1949, the enactments corresponding to the Bombay enactments which were extended to the Baroda State under clause 3 were repealed. Therefore the Baroda State Retail Trade Control and Licensing Order, 1945 and the Baroda State Foodgrains Control Order, 1942 ceased to have effect on 23rd July 1949, the date on which the Baroda State (Application of Laws) Order, 1949 came into force. The licenses issued under the said Baroda Orders also automatically lapsed and were not saved by clause 5(iii) of the latter order. It was therefore necessary for M/s. Parikh, Choksi and Attawalla to obtain licences under the Bombay Foodgrains Control Order, 1948 and the Bombay Retail Trade Control and Licensing Order, 1947 for doing business in wheat and wheat products. Thus by doing business without obtaining licences under these orders they have committed offences for which a prosecution can lie against them.

5. The draft of the C.S.D. at page 11 ante, appears to be in order and may therefore be approved.

Id/- ...

By cl.3 of the Baroda State (Application of Laws) Order, 1949 the E.S.(T.P.) Act, 1946 along with the orders and notifications issued thereunder which was in force in the State of Bombay was extended to the Baroda State and under cl.5(1)(c) of the said Order, all enactments in force in Baroda State corresponding to the E.S.(T.P.) Act, 1946 were

repealed. The permits and licences issued under an order made under the Baroda Essential Commodities Act, therefore, lapsed on the coming into force of the Baroda State (Application of Laws) Order, 1949 on the 30th day of July 1949. The D.G.P. Baroda's view that as no period was mentioned in the licences issued by the Baroda State the validity of such licences cannot be called in question and they continued to be operative for the unexpired portion of the time is not correct. Along with the Act all the Orders and along with the Orders all the licences and permits which were issued also lapsed. Thereafter on 1-1-50 the Merged States (Laws) Act, 1949 came into force. Under section 3 of that Act, the E.S.(T.P.) Act, 1946 was extended to the whole of absorbing Province viz. the whole of the State of Bombay. Under section 5 the law corresponding to the E.S.(T.P.) Act, 1946, which was in force in the Merged States immediately before the commencement of that Act namely before 1-1-50 stood repealed and the orders, notifications, permits, licenses granted under such corresponding law were saved under section 6(2) thereof. In view of this position the view taken by the C.S.D. that the old licenses lapsed on the coming into force of the Baroda State (Application of Laws) Order, 1949 is correct and the offenders who are dealing in wholesale and retail trade in foodgrains without licenses under the Bombay orders issued under the E.S.(T.P.) Act, 1946, can be prosecuted. (Please see para 1 of R.L.A.'s Opinion G.359 dt. 2nd Aug. 52 copy attached)

Before doing so, care should however be taken to see that as far as possible case of genuine understanding of the legal position, papers are not penalised and that if the position should be regularised if that could be done without administrative inconvenience.

Office of the R.L.A.

By clause 3 of the Baroda State (Application of Laws) Order, 1949, the Essential Supplies (Temporary Powers) Act, 1946 along with the orders and notifications issued thereunder which was in force in the State of Bombay was extended to the Baroda State and under clause 5(1)(c) of the said Order, all enactments in force in Baroda State corresponding to the Essential ~~Commodities~~ ~~therefore~~ Supplies (Temporary) Powers Act, 1946 were ~~repealed~~ repealed. The permits and licences issued under an order made under the Baroda Essential Commodities Act, therefore, lapsed on the coming into force of the Baroda State (Application of Laws) Order, 1949 on the 30th day of July 1949. The District Government Pleader, Baroda's view that as no period was mentioned in the licenses issued by the Baroda State the validity of such licenses cannot be called in question and they continued to be operative for the unexpired portion of the time is not correct. Along with the Act all the Orders and along with the Orders all the licenses and permits which were issued also lapsed. Thereafter on the 1st January 1950 the Merged States (Laws) Act, 1949 came into force. Under section 3 of that Act, the Essential Supplies (Temporary Powers) Act, 194-6 was extended to the whole of absorbing Province viz. the whole of the State of Bombay. Under section 5 the law corresponding to the Essential Supplies (Temporary Powers) Act, 1946, which was in force in the Merged States immediately before the commencement of that Act namely before the 1st January 1950 stood repealed and the orders, notifications, permits, licenses granted under such corresponding law were saved under section 6(2) thereof. In view of this position the view taken by the Civil Supplies Department that the old licenses lapsed on the coming into force of the Baroda State (Application of Laws) Order, 1949 is correct and the offenders who are dealing in wholesale and retail trade in food-grains without licenses under the Bombay Orders issued under the Essential Supplies (Temporary Powers) Act, 1946, can be prosecuted. (Pl. see paragraph 1 of R.L.A.'s opinion G-359, dated the 2nd August 1952 - copy attached). Before doing so, care should however be taken to see that as far as possible in case of genuine

Misunderstanding

misunderstanding of the legal position, parties
are not penalised and that the position should
be regularised if that could be done without
administrative inconvenience.

Id/-

26/12

Remembrance of Legal Affairs.

U.R. to C.S.D., No. G-716, dated the 26th December
1952.

SSD.

27-7-56.

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